GIAN SINGH & CO. LTD. v. BANQUE DE L'INDOCHINE

[C.A. (Wee Chong Jin C.J., Tan Ah Tah & Choor Singh JJ.) February 11, 1972]

[Singapore — Civil Appeal No. 13 of 1971]

Banking — Letter of credit — Certificate signature alleged forgery — Whether certificate complied with stipulation in letter of credit.

This appeal concerned the tender of documents by a beneficiary under a letter of credit. The main point in issue before the trial judge was whether a stipulated document, *prima facie*, conformed to the instructions given for the opening of the credit.

It was a specific condition of the letter of credit that a certificate signed by Balwant Singh, holder of Malaysian passport No. E.13276 and countersigned by the defendant bank, certifying that the vessel had been built according to specifications and was in a fit and proper condition to sail must be produced to the defendant's agent in Taiwan before payment could be made under the letter of credit. Later, at the insistence of the beneficiary the plaintiff requested the defendant to delete the stipulation that the certificate was to be countersigned by the defendant. This was done by the defendant and the defendant's agent in Taiwan was informed of it. The letter of credit was negotiated in due course and the defendant debited the plaintiff's account with the sum of $139,496.13 being the equivalent of U.S.$45,000.

The plaintiff commenced this action claiming a declaration that the defendant had wrongfully debited the plaintiff's account with the said sum and that the said sum was due and owing by the defendant to the plaintiff.

Before the High Court, the plaintiffs/appellants' case was that the stipulated certificate produced to the defendants' agent in Taiwan was not signed by Balwant Singh. This contention was based on two grounds: (a) that the purported signature of Balwant Singh was a forgery, and (b) that the said signature was the signature of Gian Singh & Co. Ltd. and not of the individual Balwant Singh as required by the terms of the letter of credit. The learned trial judge found for the defendants/respondents on both grounds. He held that the signature was not a forgery and that the signature "did not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp of the plaintiffs appearing around it or because the certificate was typed on the plaintiffs' letter head".

The plaintiff appealed.

This issue for determination was whether the certificate produced to the negotiating bank in Taiwan complied exactly and strictly with the condition stipulated in the letter of credit.

Held, dismissing the appeal: (1) (Wee Chong Jin C.J., Tan Ah Tah and Choor Singh JJ.): the finding of the trial judge that the signature was not a forgery, was against the weight of evidence. The appellants/plaintiffs had proved that the signature on the certificate was a forgery;

(2) (Wee Chong Jin C.J. and Tan Ah Tah J.; Choor Singh J., dissenting): The certificate produced to the negotiating bank in Taiwan was in strict compliance with the condition stipulated in the letter of credit. The condition on its proper construction did not and was clearly not intended to mean that the only acceptable and valid certificate was a certificate signed by Balwant Singh, holder of Malaysian passport E. 13276 in his personal capacity and in no other capacity. The essential requirement was not the production of a certificate of Balwant Singh, but the production of "a certificate signed by Balwant Singh". Therefore, the bank conformed strictly to the instructions it received.

Per Choor Singh J., dissenting: "... the person selected for certification was Balwant Singh. But the certification in the certificate produced was by Gian Singh & Co. Ltd. The character in which Balwant Singh signed the certificate did not comply with the requirements of the letter of credit because he signed it in his representative capacity, *to wit*, as Director of Gian Singh & Co. Ltd. for and on behalf of Gian Singh & Co. Ltd. As the certification was by Gian Singh & Co. Ltd. and not as required by Balwant Singh, the certification requirements of the letter of credit were not strictly adhered to and the certificate was therefore not a perfect tender and should not have been accepted. In holding that the certificate which was produced complied exactly and strictly with the condition stipulated in the letter of credit, the trial judge in my opinion did not give sufficient consideration to the case law on this subject which requires a perfect tender. The certificate tendered could not by any means be said to be a perfect or faultless tender... In my judgment the certificate accepted by the bank was not the certificate called for under the letter of credit. The defendant failed to perform its mandate and is not entitled to be reimbursed by the plaintiff".

Cases referred to:-

(1) *Rayner & Co. Ltd.* v. *Hambros Bank Ltd.* [1947] 2 All E.R. 694.

(2) *Equitable Trust Company of New York* v. *Dawson Partners Ltd.* 27 Ll.L.R. 49.

(3) *South Africa Reserve Bank* v. *M. Samuel & Co. Ltd.* 39 Ll.L.R. 87.

(4) *Midlands Bank Ltd.* v. *Seymour* [1955] 2 Ll.L.R. 147.

(5) *English, Scottish and Australian Bank Ltd.* v. *Bank of South Africa* (1922) 13 Ll.L.R. 21.

(6) *Lamborn* v. *Lake Shore Banking & Trust Co.* (1921) 188 N.Y.S. 162; affirmed 231 N.Y. 616.

(7) *Bank Melli Iran* v. *Barclays Bank* [1951] T.L.R. 1057.

(8) *Overseas Union Bank Ltd.* v. *Chua Teng Hwee* [1964] M.L.J. 165.

(9) *Donald H. Scott & Co. Ltd.* v. *Barclays Bank Ltd.* [1923] 2 K.B. 1.

(10) *Moralice (London) Ltd.* v. *E. D. & F. Man* [1954] 2 Ll.L.R. 526.

COURT OF APPEAL.

J. Grimberg for the appellants.

A. P. Godwin (*R. Sharma* with him) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin, C.J.: The facts relevant for the determination of this appeal have been fully set out in the judgment of Choor Singh J. but although I am in entire agreement with him that the trial judge ought, on all the evidence, to have held that the appellant had proved that the certificate in question was a forgery, I am unable to agree with him that the certificate produced to the negotiating bank in Taiwan was not in strict compliance with the condition stipulated in the letter of credit.

The condition is that there was to be produced to the negotiating bank in Taiwan "a certificate signed by Balwant Singh holder of Malaysian passport E.13276 certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the letter of credit is not to be allowed negotiation". The certificate that was produced to the bank in Taiwan was typed on the letter-head of the appellant and was in the following terms: —

"Reference to the letter of credit No. 2693, U.S. dollars forty-five thousand, issued by the Bank of Banque De L'Indochine Singapore, covering shipment of one Fishing Boat 'M/V Wei Ching No. 6' Gross tonnage 80 tons, Main engine 5 cylinders diesel engine, Horsepower 220, built in wood.

I, Balwant Singh, holding the Malaysian Passport No. E. 13276, certify that, the fishing boat had been inspected and built according to the specifications and in the fit and proper conditions to sail.

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51, 3rd Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,
I, Balwant Singh,
Passport No. E. 13276
Issued at 11th Nov. 1964
GIAN SINGH & CO., LIMITED.
Sd. Balwant Singh
Director."

It is settled law that where a letter of credit calls for the production of specific documents, its requirements in that regard must be exactly and strictly complied with, there being no room for any degree of inexactitude. The negotiating bank in Taiwan must therefore conform strictly to the instructions which it receives.

In the present case, it is necessary in the first place to determine what the condition stipulated in the letter of credit means exactly and having done so to determine whether the certificate produced to the negotiating bank in Taiwan complied exactly and strictly with the exact meaning of the condition. In my judgment the condition laid down in the letter of credit means exactly that the bank could only allow negotiation of the letter of credit if there is produced to the bank a certificate certifying that the vessel described in the letter of credit has been built according to the specifications and is in fit and proper condition to sail and which certificate is signed by a person whose name is "Balwant Singh" and who holds a Malaysian passport E.13276.

The certificate that was produced to the bank contained everything that was required by the condition but in addition it was typed on a piece of paper which is a letter paper of the appellant and it had the words "Gian Singh & Co. Ltd." and the word "Director" stamped on it by means of a rubber stamp By reason of the letter-head and the additional stamped words appearing in the certificate, it is contended by the appellant that the certificate was not in strict and exact compliance with the condition stipulated by the appellant in the letter of credit. It is submitted that the letter-head and the additional words rendered the certificate that was produced to the bank a certificate of Gian Singh & Co. Ltd. and not the certificate of Balwant Singh. In my judgment, this argument is fallacious because the requirement is not the production of a certificate of Balwant Singh but the production of "a certificate signed by Balwant Singh" (the underlining is mine). Looking at the certificate that was produced to the bank there can be no doubt at all that to the question "Is this certificate signed by Balwant Singh?" the answer must be in the affirmative. It seems to me that had the condition stipulated in the letter of credit required "a certificate signed by Balwant Singh in his personal capacity" there would be much force in the contention put forward on behalf of the appellant or, had the condition required "a certificate of Balwant Singh", it would be difficult, having regard to the authorities referred to in the judgment of Choor Singh J. to hold that the certificate produced to the bank complied strictly with the condition in the letter of credit.

In my opinion the condition stipulated in the letter of credit authorises the bank to allow negotiation if there is produced to the bank the requisite certificate signed by a person whose name is "Balwant Singh", and who is the holder of Malaysian passport E.13276. The condition, on its proper construction, does not and is clearly not intended to mean that the only acceptable and valid certificate is a certificate signed by Balwant Singh, holder of Malaysian passport E.13276 in his personal capacity and in no other capacity. In other words, it is the identity of the person who is to certify which is of importance and this requirement must be strictly adhered to.

In my judgment the certificate that was produced complied exactly and strictly with the condition stipulated in the letter of credit and the bank conformed strictly to the instructions it received. Accordingly I am of the opinion that the trial judge was right in dismissing the appellant's claim and I would dismiss the appeal with costs.

Tan Ah Tah J.: In this appeal which concerns, *inter alia,* the signature on a certificate which was produced to the defendant bank's agent in Taiwan in connection with a letter of credit, it is contended by counsel for the plaintiff company that the signature which purported to be that of Balwant Singh was a forgery and that the trial judge erred in finding that the signature was not a forgery. It is abundantly clear from the surrounding circumstances that a fraud was perpetrated on the plaintiff company and that Balwant Singh was an innocent party in the transaction. In my view, the finding of the trial judge that the signature was not a forgery was against the weight of evidence. I have reached the conclusion that the plaintiff company has proved that the signature on the certificate was a forgery.

However, the fact that the signature on the certificate was not the genuine signature of Balwant Singh does not avail the plaintiff company as in the circumstances of this case the defendant bank's agent in Taiwan *i.e.* the paying bank was in no position to be aware of the forgery.

The crucial question to be decided in this appeal is whether the certificate which was tendered to the paying bank complied with the terms of the letter of credit.

One of the special conditions contained in the letter of credit was that there was to be produced to the paying bank in Taiwan "a certificate signed by Balwant Singh holder of Malaysian passport E.13276 certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the letter of credit is not to be allowed negotiation"

The certificate which was duly produced to the paying bank in Taiwan was typed on the letter-head of the plaintiff company and was in this form: —

"Reference to the Letter of Credit No. 2693, U.S. Dollars Forty-Five Thousand, issued by the Bank of BANQUE

DE L'INDOCHINE Singapore, covering shipment of one Fishing Boat "M/V WEI CHING NO. 6" Gross tonnage 80 Tons, Main Engine 5 Cylinders Diesel Engine, Horsepower 220, Built in wood.

I, Balwant Singh, Holding the Malaysian Passport No. E-13276, certify that, the Fishing Boat had been inspected and built according to the specification and in the fit and proper conditions to sail.

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51, Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,
I, Balwant Singh,
Passport No. E. 13276
Issued at 11th Nov. 1964
GIAN SINGH & CO., LIMITED.
Sd. Balwant Singh
Director."

The name "Gian Singh & Co., Limited" and the word "Director" were stamped on the certificate by means of a rubber stamp. The signature "Balwant Singh" was in writing.

In the judgment of Choor Singh, J. a number of cases are referred to in which it has been laid down that the law requires strict and exact compliance with the stipulated conditions in a letter of credit It is contended by counsel for the plaintiff company that the certificate does not comply with the special condition in this case in that the certificate although bearing the signature "Balwant Singh" should be regarded in law as the certificate of Gian Singh & Co., Ltd. and not that of Balwant Singh. In view of this argument put forward by counsel for the plaintiff company, it is necessary to remind oneself that the stipulated condition requires a certificate signed by "Balwant Singh holder of Malaysian passport E.13276." The reference to the passport number means that the certificate is to be signed by that particular person named Balwant Singh who is the holder of Malaysian passport E.13276 and not any other person whose name happens to be Balwant Singh.

When the certificate and passport were produced to the paying bank in Taiwan it would have been clear and obvious, in the view of the officers of that bank, that the certificate had been signed by Balwant Singh holder of Malaysian passport E.13276. In my opinion, the fact that the name "Gian Singh & Co., Limited" and the word "Director" were stamped on the certificate by means of a rubber stamp does not lead to the conclusion that the certificate was not signed by Balwant Singh holder of Malaysian passport E.13276. It follows that there has been strict and exact compliance with the special condition contained in the letter of credit.

I would accordingly dismiss the appeal with costs.

Choor Singh J.: This appeal concerns the tender of documents by a beneficiary under a letter of credit and the main point in issue before the trial judge was whether or not a stipulated document, on the face of it, conformed to the instructions given for the opening of the credit.

The facts are these. The plaintiff company requested the defendant bank to open an irrevocable letter of credit in favour of Thai Lung Ship Machine Manufactory of Taiwan for a sum of U.S.$45,000. The credit was required to meet the purchase price of a fishing vessel to be constructed by the beneficiary. It was a specific condition of the letter of credit that a certificate signed by Balwant Singh, holder of Malaysian passport No. E.13276 and countersigned by the defendant bank, certifying that the vessel had been built according to specifications and was in a fit and proper condition to sail must be produced to the defendant's agent in Taiwan before payment could be made under the letter of credit. Later at the insistence of the beneficiary the plaintiff requested the defendant to delete the stipulation that the certificate was to be countersigned by the defendant. This was done by the defendant and the defendant's agent in Taiwan was informed of it. The letter of credit was negotiated in due course and the defendant debited the plaintiff's account with the sum of $139,496.13 being the equivalent of U.S.$45,000. The plaintiff commenced this action, claiming a declaration that the defendant had wrongfully debited the plaintiff's account with the said sum and that the said sum was due and owing by the defendant to the plaintiff.

Before the High Court, the plaintiff's case was that the stipulated certificate produced to the defendant's agent in Taiwan was not signed by Balwant Singh. This contention was based on two grounds, first, that the purported signature of Balwant Singh was a forgery and secondly, that the said signature was the signature of Gian Singh & Co., Ltd. and not of the individual Balwant Singh as required by the terms of the letter of credit. The trial judge found for the defendant on both grounds. He held that the signature was not a forgery and that the signature "did not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp of the plaintiff appearing around it or because the certificate was typed on the plaintiff's letter-head."

In my view the trial judge's finding on the issue of forgery was clearly against the weight of evidence. First, there was the evidence of Balwant Singh who maintained that the signature was a forgery and his evidence was the only primary evidence on this issue. Secondly there was conclusive evidence before the court that the passport of Balwant Singh produced to the defendant's agent in Taiwan together with the certificate in question was a forged passport. Thirdly the certificate and the forged passport were produced by a person of known criminal character who was wanted by the Singapore immigration authorities. Furthermore the certificate was supposed to be in connection with a newly constructed vessel but the evidence shows that the vessel sold by the beneficiary was in fact 14 years old. The surrounding circumstances and all the known and undisputed facts indicate that a fraud was perpetrated on the plaintiff to which Balwant Singh could not have been a party and that the defrauder, who undoubtedly used a forged passport, also utilised a forged certificate. In my opinion the plaintiff successfully proved that the certificate in question was a forgery but that fact alone is not of much assistance to the plaintiff because the paying bank *i.e.* the defendant's agent in Taiwan, had no knowledge of the forgery and it was entitled to assume that the certificate was genuine

when there was nothing on the face of it to indicate anything to the contrary.

The main issue before the trial court was, as in this appeal, whether the certificate tendered was in accord with the terms of the letter of credit. It is therefore necessary to examine the law relating to the imposition and compliance therewith of specific conditions in a letter of credit.

The right of a customer to impose terms or special conditions and to have them complied with precisely by the bank establishing the credit was explained by Goddard L.J. (as he then was) in *Rayner & Co., Ltd.* v. *Hambros Bank, Ltd.*[1] at page 703: —

"There are three people concerned where a banker's credit is in question: there is the person who requests the bank to establish the credit, there is the bank who establishes it, and there is the beneficiary who has the opportunity of drawing on the credit. The person who requests the bank to establish the credit can impose what terms he likes.... The bank, if it accepts the mandate to open the credit, must do exactly what its customer requires it to do.... If the bank wants to be reimbursed by the customer, it must show that it has performed its mandate."

It is settled law that where a letter of credit calls for the production of a specific document, its requirements in that regard must be "strictly" and "exactly" complied with. In *Equitable Trust Company of New York* v. *Dawson Partners Ltd.*,[2] Viscount Sumner, said at page 52: —

"... It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk. The documents tendered were not exactly the documents which the defendants had promised to take up, and *prima facie* they were right in refusing to take them...."

And Rowlatt J. was of the same view in *South Africa Reserve Bank* v. *M. Samuel & Co., Ltd.*,[3] where he observed, at page 93: —

"... It is, of course, abundantly clear that the plaintiff bank must fulfil with perfect literalness and accuracy the terms of the letter of credit; it will not do to say, as has been pointed out many, many times — Sir John Simon reminded me of one of the many passages — that they did something which was just as good; but that does not mean that, when one is considering whether such and such a document, or such and such an operation, is or is not within the meaning of the letter of credit, one cannot consider whether a restriction which is suggested is not entirely devoid of commercial importance. He never meant to rule that out. One has always to look at it sensibly; but when one has discovered what exactly the letter of credit means, then I think the person acting under it is bound to act under it quite literally...."

Strict compliance by a bank with the instructions was emphasised again by Devlin J. in *Midlands Bank, Ltd.* v. *Seymour*,[4] at page 151: —

"... There is, of course, no doubt that the bank has to comply strictly with the instructions that it is given by its customer. It is not for the bank to reason why. It is not for it to say: 'This, that or the other does not seem to us very much to matter.' It is not for it to say: 'What is on the bill of lading is just as good as what is in the letter of credit and means substantially the same thing.' All that is well established by authority. The bank must conform strictly to the instructions which it receives."

There is further emphasis at page 153: —

"... In my judgment, no principle is better established than that when a banker or anyone else is given instructions or a mandate of this sort, they must be given to him with reasonable clearness. The banker is obliged to act upon them precisely. He may act at his peril if he disobeys them or does not conform with them."

Similarly, in *English, Scottish and Australian Bank, Ltd.* v. *Bank of South Africa*,[5] Bailhache J. said:

"... It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened."

This doctrine is enunciated in many American cases as well. In *Lamborn* v. *Lake Shore Banking & Trust Co.*,[6] Smith J. said: —

"... A party who is entitled to draw against a letter of credit must strictly observe the terms and conditions under which the credit is to become available and, if he does not, and the bank refuses to honour his draft, he has no cause of action against the bank."

The cases show that the doctrine of strict compliance with the terms of the letter of credit is rigidly enforced by the courts. In *Equitable Trust Co. of New York* v. *Dawson Partners Ltd., supra,* it was held that a certificate by an expert was not sufficient where one by "experts" was required. In *Rayner* v. *Hambros Bank, Ltd., supra,* the credit called for documents covering a shipment of Coromandel groundnuts; the bill of lading tendered evidenced a shipment of machine-shelled groundnut kernels. Hambros Bank Ltd. refused to pay and their attitude was upheld by the Court of Appeal although it was established that anyone in the trade would have known that the two descriptions meant the same thing. The court declined to accept that this made any difference. In *Bank Melli Iran* v. *Barclays Bank*,[7] McNair J. held that documents evidencing a shipment of "100 new, good, Chevrolet trucks" was not a good tender under a credit calling for "new" trucks. In *Overseas Union Bank Ltd.* v. *Chua Teng Hwee*,[8] the court held that there was no strict or exact compliance with the terms of the letter of credit which required an inspection certificate evidencing shipment of seaweed (tengusa) because the certificate submitted was only of seaweed with the qualifying word "tengusa" missing. It was argued for the defendant that the omission of the word "tengusa" was of no consequence as "tengusa" was the Japanese word for seaweed. The court rejected this argument, holding that it was quite irrelevant to consider what the word "tengusa" meant and that the buyers were entitled to get the stipulated document certifying that the goods were in fact seaweed (tengusa) whatever "tengusa" may mean. In *Donald H. Scott & Co., Ltd.* v. *Barclays Bank, Ltd.*,[9] a credit called for a full set of bills of lading and the tender of two out of a set of three was held to be a bad tender.

The decisions show that the first characteristic feature of the irrevocable credit is its independence of

the contract of sale and of the contract between the banker and the buyer. The second important feature is the duty of strict compliance. Only a perfect tender may be safely accepted by the banker.

Furthermore it has been held in *Equitable Trust Co. of New York* v. *Dawson Partners Ltd., supra,* and in *English, Scottish and Australian Bank, Ltd.* v. *Bank of South Africa,*[5] that a banker is not entitled to disregard, and has no discretion to deviate from, the instructions of his customer. Even the rule, that *de minimis non curat lex* does not apply to documentary credits. In *Moralice (London), Ltd.* v. *E.D. & F. Man,*[10] a documentary credit covered a shipment of 500 metric tons of sugar, packed in heavy single bags, of 100 kilogrammes each. The quantity actually shipped was 300 kilogrammes short of the 500 tons. One of the questions which the court had to determine was whether documents evidencing the shipment of 499.7 tons were a good tender McNair J. said:

"...I have been referred to no authority, and I have found none, in which this (*de minimis*) rule has ever been applied as between a buyer and his bank, or between a confirming bank and the beneficiary seller, and there are indeed quite definite indications that the rule should not be so applied."

This decision does not leave any room for discretion.

In the present case one of the special conditions of the letter of credit was that there was to be produced to the negotiating bank in Taiwan "a certificate signed by Balwant Singh holder of Malaysian passport E.13276 certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the letter of credit is not to be allowed negotiation."

The certificate, produced to the defendant's agent in Taiwan, was typed on the letter-head of the plaintiff and was in this form: —

'Reference to the letter of credit No. 2693, U.S. dollars forty-five thousand, issued by the Bank of Banque De L'Indochine Singapore, covering shipment of one Fishing Boat "M/V Wei Ching No. 6" Gross tonnage 80 tons, Main engine 5 cylinders diesel engine, Horsepower 220, built in wood.

I, Balwant Singh, holding the Malaysian Passport No. E. 13276, certify that, the fishing boat had been inspected and built according to the specifications and in the fit and proper conditions to sail.

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51. 3rd Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,
I, Balwant Singh,
Passport No. E. 13276
Issued at 11th Nov. 1964
GIAN SINGH & CO., LIMITED.
Sd. Balwant Singh
Director."

The words "Gian Singh & Co., Ltd." and the word "Director" were stamped on the certificate by means of a rubber stamp. The signature "Balwant Singh" was in writing.

The crucial point for decision in this appeal is whether or not the certificate produced complied strictly and exactly with the condition stipulated in the letter of credit. Counsel for the appellants submits that the certificate was not in accord with the terms of the letter of credit and his submission is based on two grounds. First, it is contended that there was no evidence before the paying bank in Taiwan that the certificate produced was in fact signed by Balwant Singh, holder of Malaysian passport E.13276. Counsel submits that the only way in which the bank could have been satisfied on that point was for the holder of the specified passport to appear before an officer of the bank and either sign the certificate in the presence of the officer or admit to the officer that the signature on the certificate was his. Counsel argued that the production of a signed certificate together with the specified passport was insufficient and that consequently there was no strict or exact compliance with the requirement that "a certificate signed by Balwant Singh holder of Malaysian passport E.13276" should be produced before payment is made. In my opinion the production of the stipulated passport was sufficient assurance to the paying bank that the certificate produced was in fact signed by the holder of the passport produced to the bank together with the certificate. The bank took for purposes of record a photostat copy of the passport produced to it. They had no reason to believe that the passport or the certificate was a forgery and in the circumstances they were entitled to assume that the certificate was signed by the person whose passport was produced to them.

The second ground on which it is contended that the certificate produced was not the certificate required under the letter of credit relates to the signature on the certificate. It is submitted that the certificate was required to be signed by Balwant Singh whereas the certificate produced is signed by Gian Singh & Co., Ltd. Assuming that the signature "Balwant Singh" is not forged, the certificate is in one sense *i.e.* physically, signed by Balwant Singh. And that is the sense in which the trial judge regarded the matter for he states in his judgment, that the signature "did not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp of the plaintiff appearing around it or because the certificate was typed on the plaintiff's letter-head."

The substantial point for decision in this appeal, therefore, is whether the trial judge was right in his approach to the question whether or not the certificate was signed by Balwant Singh within the meaning of the letter of credit. The answer to this question depends, in my opinion, on the true meaning of the expression "a certificate to be signed by Balwant Singh holder of Malaysian passport E.13276" in the context of the letter of credit. In my opinion the letter of credit, properly construed, required a certificate bearing the signature "Balwant Singh" without any other qualification. In other words the certificate was to be signed by Balwant Singh on his own behalf and not in any representative capacity. To put it in yet another way the certification was to be by a person named Balwant Singh holder of Malaysian passport E.13276 and not by any other individual or company. If the certification was to be by Gian Singh & Co., Ltd. the letter of credit would have so stated. I have no doubt at all that the certificate was required to be signed by Balwant Singh in his personal capacity and not in any representative capacity.

Counsel for the respondent submits that the letter of credit did not place any restrictions on the signature of Balwant Singh. Counsel goes so far as to suggest that even if Balwant Singh had signed the certificate as President of the Indian Chamber of Commerce with the rubber stamp of the Indian Chamber of Commerce above his signature and the word President below it, such a certificate would still comply with the requirements of the letter of credit. I am unable to accept this submission. The expression "a certificate signed by Balwant Singh" must be given its ordinary natural and sensible meaning and as stated earlier it means a certificate signed by the individual Balwant Singh in his personal capacity and not in any representative capacity.

The signature on the certificate in question appears within the rubber stamp of Gian Singh & Co., Ltd. Such a signature is the very signature of the said company ordinarily used in its business. In my opinion the certificate *prima facie* appears and would be taken by any ordinary person to be signed by Gian Singh & Co., Ltd. The certificate in question properly construed, is in the eyes of the law, signed by Gian Singh & Co., Ltd. Anyone reading the certificate would at once say that it is signed by Gian Singh & Co., Ltd. However, it is submitted that nevertheless it is also signed by Balwant Singh and therefore it complies with the requirements of the letter of credit. I am unable to accept this submission. A certificate signed as already described and one bearing the signature "Balwant Singh" without any other qualification is not one and the same thing. The certification in the certificate is by Gian Singh & Co., Ltd. and not, as required, by Balwant Singh.

Was the paying bank entitled to ignore the rubber stamp of Gian Singh & Co., Ltd. which qualified the signature of Balwant Singh? The cases show that the omission or addition of a single qualifying word in a stipulated document can render the document unacceptable. The law requires strict, exact and precise compliance with the stipulated condition in a letter of credit. In my opinion, the paying bank in Taiwan was not entitled to ignore the rubber stamp of Gian Singh & Co., Ltd. which covered the signature "Balwant Singh". The said rubber stamp clearly indicated that the certificate was signed by Balwant Singh as director of Gian Singh & Co., Ltd. for and on behalf of Gian Singh & Co., Ltd. The essence of a documentary credit transaction is that documents must strictly comply with the specified requirements. Bankers are not in a good position to judge what is a fundamental deviation from their instructions and what is not. And when they see any deviation or any unusual feature it should serve as a "red flag" directing the bank to scrutinise the document with extra care. A deviation justifies rejection. If in doubt the bank should refer the matter to the buyer. In my opinion the paying bank in Taiwan should have either refused to accept the certificate or should have referred the matter to the defendant before negotiating the letter of credit. The paying bank was not entitled to ignore the rubber stamp of Gian Singh & Co., Ltd. which qualified the signature of Balwant Singh. The said rubber stamp was not entirely devoid of commercial importance. It should have been apparent to the paying bank that the signature on the certificate was, by virtue of the rubber stamp, the signature of Gian Singh & Co., Ltd. The paying bank acted at its own risk in accepting a certificate signed by Gian Singh & Co., Ltd. when it was under a binding obligation to obtain a certificate signed by Balwant Singh on his own behalf.

Professor Ellinger in his book "Documentary Letters of Credit" has at page 327 summarised the position very clearly regarding the tender of a certificate: —

> "Often, to obtain an additional security, the documentary credit stipulates for the tender of a certificate. There are various types of certificates....
>
> The purpose of all these certificates is to render the bank and buyer less dependable on the honesty of the seller. There is, therefore, a necessity for strict compliance in the certificates or, to be more accurate, each certificate must confirm and certify that for which it is issued. Moreover, since the identity or character of the person or firm selected for certification is of importance, it must be strictly adhered to."

The underlining is mine but the authority for this statement is the decision in *Equitable Trust Co. of New York* v. *Dawson Partners, Ltd.*[2] In the present case the person selected for certification was Balwant Singh. But the certification in the certificate produced was by Gian Singh & Co., Ltd. The character in which Balwant Singh signed the certificate did not comply with the requirements of the letter of credit because he signed it in his representative capacity, to wit, as Director of Gian Singh & Co., Ltd. for and on behalf of Gian Singh & Co., Ltd. As the certification was by Gian Singh & Co., Ltd. and not as required by Balwant Singh, the certification requirements of the letter of credit were not strictly adhered to and the certificate was therefore not a perfect tender and should not have been accepted. In holding that the certificate which was produced complied exactly and strictly with the condition stipulated in the letter of credit, the trial judge in my opinion did not give sufficient consideration to the case law on this subject which requires a perfect tender. The certificate tendered could not by any means be said to be a perfect or faultless tender.

The banker's right of reimbursement depends on his accepting from the seller a faultless tender. "There is really no question here... of diligence or of negligence or of breach of a contract of employment to use reasonable care and skill," *per* Viscount Sumner in *Equitable Trust Co. of New York's* case.[2] The banker must, in other words, strictly adhere to the terms of the application form. If he accepts faulty documents from the seller, he does so at his own risk.

In my judgment the certificate accepted by the bank was not the certificate called for under the letter of credit. The defendant failed to perform its mandate and is not entitled to be reimbursed by the plaintiff. The plaintiff who is the appellant in this appeal is therefore entitled to succeed in this action and to have judgment in terms of its claim. I would therefore allow the appeal.

Appeal dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*